

CHAPTER 13

FISCAL NOTES

13.1 INTRODUCTION

This chapter begins with an overview of fiscal notes as they relate to departments, Legislative Council, and the Joint Budget Committee staff. Sections 13.3 and 13.4 provide a review of communications and confidentiality concerning fiscal notes. A discussion of the fiscal note process is provided in Section 13.5. Finally, directions for the submission of Fiscal Impact Analysis Forms are provided in section 13.6.

13.2 OVERVIEW OF FISCAL NOTES

Fiscal notes are the budget impact analyses for legislation. Just as Change Requests (described in Chapter 4) provide the budget impact for executive policy and operational needs as allowed under current law and typically funded in the annual Long Bill, fiscal notes reflect the budget action for special legislation. However, while a normal Change Request can be developed and considered by the executive and legislative branches across as many as eleven months, often a fiscal note must be developed in two to three days, and considered for one to two weeks. Nonetheless, a fiscal note can have just as large an impact on the State budget, sometimes more so, than a Change Request.

While Change Requests become official through line items in an enacted Long Bill, fiscal notes become official through appropriation clauses in special bills, or, in other words, non-appropriation bills.

Fiscal notes are completed by executive and non-executive departments for proposed legislation both before and during the legislative session, often before the bill is introduced. The completion and revision of fiscal notes occurs throughout the legislative process as bills are amended. The fiscal note process begins with a department's receipt of a fiscal note request from Legislative Council.

House Bill 09-1112 codified the role and requirements of departments, agencies, and institutions in the fiscal note process. Specifically the legislation;

- Requires departments, agencies, and institutions to provide information consistent with the manner requested by Legislative Council;
- Requires assumptions and calculations to be provided and supported;
- Requires narrative to be provided to substantiate any changes in workload;
- Identifies conditions for meeting deadlines; and

- Specifies circumstances for modifying initial calculations.

Departments typically begin to receive fiscal note requests in November, prior to the start of the legislative session. The earliest fiscal note requests are usually from Interim Committee bill drafts that were considered over the summer. Most fiscal note requests are received in late December through February as legislative deadlines for the introduction and passage of bills by the first house approach.

For bills that are still active and not sent to the Governor, fiscal notes and appropriation clauses can be amended up until the final day(s) of the session in May. However, HB 09-1112 clarified that the agency shall not modify the amount of the fiscal impact that was originally calculated unless one of three conditions are met: (1) the bill has been modified; (2) there is new information that was previously unavailable and warrants modification of the fiscal impact; or (3) there is a technical error in the initial fiscal impact submitted by the department that warrants modification. Agencies will not be allowed to amend their fiscal impact without a clear explanation of the reasons for the update, or have requested additional funds or FTE that were not related to the specific legislation.

Department Role in the Fiscal Note Process

In most cases a fiscal note request is sent to a department's budget office or fiscal note coordinator. Generally the department's budget office forwards the request and legislation to the appropriate program for analysis. Once information is gathered by program staff the department budget office or fiscal note coordinator reviews it for clarity and ensures fiscal impacts are addressed accordingly. The forms must be completed, the calculations verified, a summary spreadsheet populated, and the information is returned to Legislative Council. Specific guidance regarding the analysis is provided in Section 13.5 Fiscal Note Process.

Due to the limitation of a 120 day session (including weekends and holidays), this process usually has very short turnaround times for analysis. If a department receives a fiscal note request, the department must make every effort to respond in the allotted time. However, if the legislation is extremely involved or the timelines cannot be met, the department should contact appropriate Legislative Council staff immediately and agree on an alternative deadline. It is very important that the department inform Legislative Council staff in ample time about what is and what is not doable. Typically, Legislative Council staff do their best to reschedule workload and notify committee staff if the timeline must be extended, but it is the department's responsibility to identify the timeline, comply with the timeline, and negotiate an extension before the due date has arrived.

Legislative Council takes the fiscal note information provided by the department, analyzes it, combines it with other fiscal note information from other departments, and creates the final fiscal note. It is Legislative Council that has responsibility for the official fiscal note, the one that is available on line and presented to the sponsor and General Assembly. Legislative Council makes a series of judgments about the accuracy of departmental information.

Departments should review the Legislative Council published fiscal notes for accuracy with their submitted analysis and regularly track legislation for amendments altering the fiscal impact.

Pursuant to House Bill 09-1112, departments may resubmit their fiscal impact if amendments alter the fiscal impact. The full ramifications of House Bill 09-1112 are discussed in Section 13.5.

Legislative Council Role in the Fiscal Note Process

Legislative Council is responsible for the review of all legislative measures for fiscal impact with the exception of appropriation bills, such as Supplemental bills and the Long Bill. Legislative Council forwards legislation to affected departments requesting a fiscal note analysis. Upon receipt of completed fiscal impact worksheets and narratives from the departments, Legislative Council reviews the fiscal note analysis, combines department fiscal note analyses if multiple agencies are affected, and publishes the fiscal note on the General Assembly website with the corresponding bill. Legislative Council, with information from departments, also determines if there is no fiscal impact on a bill. Legislative Council will also request updated fiscal notes from departments as legislation is amended.

Joint Budget Committee Staff Role in the Fiscal Note Process

The Joint Budget Committee staff is also involved in the fiscal note process as it relates to preparing appropriation clauses for legislation. The Joint Budget Committee (JBC) staff complete a fiscal analysis document which accompanies each bill to the House or Senate Appropriations Committee (separate and in addition to the Legislative Council Staff fiscal note). In this document, the JBC staff summarize all amendments made to a bill. The JBC staff “concur,” “does not concur,” or provide “updated analysis” to the Legislative Council fiscal note. The JBC staff work with Legislative Council staff to understand the Legislative Council staff analysis, and on occasion, JBC staff provide an updated analysis which may change the fiscal impact or appropriations clause. The JBC staff also list any additional points to consider; these are usually areas of importance that are either not emphasized in the fiscal note, or are future year appropriations impacts, or continuous spending authority issues.

Appropriation clauses provide legislative authorization of funds for specific purposes as well as FTE. Each clause contains information concerning the fiscal year in which the appropriation is made, amount and type of funds (General Fund, cash funds, reappropriated funds or federal funds), source of funds if cash or reappropriated funds, and changes in FTE authorization. The information in these clauses is usually very similar to the fiscal note analysis.

The Joint Budget Committee staff would emphasize that the most effective and efficient place for adding or amending an appropriation clause is in House or Senate Appropriations Committees. OSPB encourages departments to follow this process when possible. Appropriation clauses that are added or amended in committees of reference, second reading, or third reading tend to result in increased errors in appropriation clauses. On the rare occasion when there is an error to the appropriations clause and the bill has already passed through House and Senate Appropriations, is it appropriate to amend the appropriations clause on second reading.

Departments should also review the appropriation clauses developed for bills for which a fiscal note was submitted. Departments are seldom authorized to submit a supplemental budget

request simply because there was an error or misunderstanding by Legislative Council in the fiscal note process or by Joint Budget Committee staff during the appropriations process. Departments must review the appropriation clauses as they are developed, and, if significant concerns arise, contact first the Office of State Planning and Budgeting, then Legislative Council and Joint Budget Committee staff (if necessary).

13.3 FISCAL NOTE COMMUNICATION WITH THE OFFICE OF STATE PLANNING AND BUDGETING

A fiscal note can have as much impact on the State budget and State policy as a Change Request, even more. However, unlike the Change Request process, fiscal notes do not routinely require OSPB review prior to submission to Legislative Council. This is because the volume is too high for OSPB review, and the timelines too short to allow OSPB review in addition to the time needed for department analysis.

Therefore, it is important that departments take the correct steps to initiate involving OSPB in the fiscal note process. Departments must involve OSPB in the following situations:

- Whenever there is a meeting on a bill involving Joint Budget Committee staff, the department's assigned OSPB analyst (or designee) must be invited to the meeting and reasonably accommodated (meaning, please include OSPB staff on the query for attendees' availability);
- Whenever a Joint Budget Committee staff submits written questions on a bill to department staff, department responses must be approved with OSPB staff first (pursuant to Chapter 1);
- When a department identifies that a particular fiscal note will directly impact the Governor's policy or revise the Governor's Budget Request, the department should send an informational e-mail to the assigned OSPB Budget Analyst;
- If the financing of a request may have statewide impact, or the complexity of the financing requires additional expertise, the department should include OSPB staff in the analysis development;
- If a department is requested to provide a response on legislation that has a statewide impact; OSPB should be informed so statewide guidance can be disseminated if required (i.e., how much would it cost to require 3 furlough days for all of the State's employees);
- If a fiscal note is being developed for a piece of legislation on the Governor's agenda or the department's legislative agenda, OSPB must be included in the review of the analysis; and
- Any other situation where a department believes that the nature of the fiscal note implies that it would be prudent to include OSPB.

A great resource for understanding some of these issues is the department's legislative liaison. These liaisons have close relationships with the Governor's Office of Legislative Relations and can identify bills for department budget staff that may require OSPB coordination.

The Office of State Planning and Budgeting plays a direct role in recommending bills for Governor signature. If a bill has a General Fund fiscal impact, it is strongly recommended to keep the assigned OSPB analysts aware of developments and changes on the bill so that OSPB is fully informed before it comes time to request Governor signature on a bill.

As stated previously, a department's fiscal analysis becomes the basis for the Legislative Council fiscal note. In many cases, the fiscal notes from departments and Legislative Council are similar or have very minor differences. However, sometimes they differ substantially based on differing interpretations of the language or assumptions. If the Legislative Council version of the fiscal note is significantly different from that of the department, and the department does not agree with the revisions, the department should notify the OSPB. From there, OSPB and department budget staff can discuss options such as leaving the fiscal note as it stands, communicating with Legislative Council fiscal note staff, or discussing the issue with the Governor's Office of Legislative Relations.

13.4 CONFIDENTIALITY OF FISCAL NOTES AND RELATED DOCUMENTS

Legislation is considered confidential until it is introduced in its primary chamber of the legislature; therefore, fiscal notes are also confidential until that time. Departments should share and coordinate fiscal note responses only with the Office of State Planning and Budgeting and affected departments. Departments cannot provide draft legislation or key fiscal impact assumptions to contractors,¹ providers, or affected organizations until it is public, unless authorized by the Governor's Office of Legislative Relations.

Once legislation is introduced and assigned to a legislative committee, typically the Legislative Council version of the fiscal note is used for reference by involved parties. However, the department's fiscal note, as sent to Legislative Council, can be provided upon request, especially for Joint Budget Committee staff. Legislative Council staff aim to create fiscal notes that provide succinct, reasonable, and defensible information. There should be comprehensive detail similar to the detail provided in a Change Request in the department's version of the fiscal note. Department staff should ensure that they have their Budget Office and Legislative Liaison's approval before forwarding the department version of the fiscal note outside of the department.

13.5 FISCAL NOTE PROCESS

This section provides a framework for departments in completing their fiscal note analysis. Types of fiscal impacts and factors to consider when completing fiscal note analyses are also discussed. This section also provides information concerning the modification of a fiscal note.

¹Except department lobbyists under written contract with the department.

Overview of Legislative Council Fiscal Note

The official fiscal note is completed by Legislative Council and typically contains the following sections/pieces of information:

- General bill information including title, bill/draft number, sponsors, date, bill status, and Legislative Council Staff analyst;
- Summary table illustrating at least two years of fiscal impacts;
- Summary of legislation including major changes to existing statute;
- State revenue projections including sources of revenues and their allocation;
- State expenditures which usually includes a general statement concerning overall state expenditures before noting expenditures by department;
- Local government impact, if applicable;
- State appropriations, if applicable; and
- Departments contacted for analysis and input.

Types of Fiscal Impact

Legislation is analyzed by affected departments to determine if a fiscal impact will result if enacted. There are four fiscal impact statements: fiscal impact, no fiscal impact, conditional fiscal impact, and indeterminate fiscal impact. A brief description of each is provided below.

- *Fiscal impact*: a fiscal impact can be provided based on a clear analysis, assumptions, and justification.
- *No fiscal impact*: based on the legislation reviewed, no fiscal impact will result or the impact will be minimal and can be absorbed by the department. Explanations must accompany statement of no fiscal impact. It is not acceptable to simply state that a bill "has no fiscal impact." The department must defend why the bill does not have a cost impact on the department. For example, if a bill has no fiscal impact, the department must identify why, such as if the bill complies with current practice, provides only clarifying language, or addresses contradictions in current law. A statement of no fiscal impact with expenditures that can be absorbed by the department should include detailed costs and rationale as to why they can be absorbed.
- *Conditional fiscal impact*: fiscal impact of legislation is based on triggers which may or may not occur. For example, this would include a new program based on the gifts, grants, and donations. In this case the impact is conditional if adequate gifts, grants, or donations are collected.

- *Indeterminate fiscal impact:* In this case it is not possible for the department to determine a fiscal impact or the assumptions for determining impact cannot be readily quantified. In many cases indeterminate fiscal impact is interpreted as no fiscal impact; therefore, departments should make assumptions based on the language and assess the fiscal impact to the best of their ability. This type of fiscal note should be avoided if possible. If assumptions must be made in order to quantify an impact, those should be specifically delineated and explained in the fiscal note.

Regardless of a department's assessment of the fiscal impact of legislation, departments should submit a fiscal note response to Legislative Council Staff. Submission of a response ensures the department opportunity to comment on legislation and is required by law.

Factors to Consider When Completing a Fiscal Note

When completing a fiscal note, departments should identify what is necessary to implement the legislation, if it becomes law. This includes needs for FTE, operational costs, leased space, vehicles, legal services, computer programming, printing/postage, funds for changes in caseload or benefits, travel, and so forth. Departments should review each of the costs and determine if any or all can be absorbed within the existing budget. For example, departments should not request personal services funding for a bill unless they actually need to hire a person to perform the duties. That is, if a current employee will perform some function in the bill, such as attend a commission meeting, then resources would not be requested. The department would acknowledge in the fiscal note that there are requirements, but that they would be absorbed by existing staff.

Below are general factors to consider when completing a fiscal note.

- The analysis should be factual based on the legislation as written and should not be an editorial.
- All information included in the response should be clear, concise, defensible, complete, and accurate.
- Each statute affecting a department should be identified with assumptions and impacts.

Factors to Consider Related to Assumptions

- Policy and fiscal assumptions should be reasonable.
- Assumptions should be consistent between fiscal notes. For example, if a department assumes changing the requirements for animal testing increases the cost of the test increases from \$10/test to \$20/test, this assumption should be used for all fiscal notes related to the same test.
- Common policy assumptions should be consistent with those specified by Legislative Council. OSPB and Legislative Council attempt to coordinate so assumptions are the same

for fiscal notes and they are for Change Requests. Please contact the Common Policy Budget Analyst at OSPB if there are discrepancies.

Factors to Consider Related to Calculations

- Are calculations correct and accurate based on available information and assumptions?
- Are implementation dates realistic? For example, if a waiver from the federal government is needed to implement the legislation, is the implementation date reasonable? Will computer programming changes be necessary which may delay the implementation of the legislation?
- Are general administrative services – accounting, budgetary, human resources, facilities, etc. – necessary to implement the legislation?
- Are there other fund sources besides General Fund that could be used to implement the legislation and/or changes that would reduce or eliminate the fiscal impact?

Factors to Consider Related to Justification of Assumptions and Calculations

- Identify specific statutory changes that drive a fiscal impact. Departments should clearly link the statutory changes and the fiscal impact.

Factors to Consider Related to Technical Aspects

- Review of statutory changes to determine if they are technically correct or if there are conflicts between existing state and federal law exist.

Revision of Fiscal Notes

Pursuant to House Bill 09-1112, fiscal notes may be modified and revised. Revised calculations and assumptions may be submitted to Legislative Council, if one or more of the following criteria are met:

- a. The bill has been amended;
- b. There is newly discovered information that was previously unavailable that warrants modification of the original calculations and narrative submitted by the state department, agency, or institution; or
- c. Technical errors are discovered that warrant modification of the original calculation and narrative submitted by the state department, agency, or institution. (House Bill 09-1112)

Departments should work with Legislative Council to complete and submit revised fiscal notes as permitted and necessary.

13.6 FISCAL IMPACT ANALYSIS FORM

Annually in August, departments submit legislative proposals with fiscal impacts to OSPB for the upcoming legislative session. For this FY 2010-11 cycle, these forms are due to each department's assigned OSPB Budget Analyst on August 20, 2009. The Budget Analyst will review, request revisions, and use the form to brief the Governor's Budget and Legislative directors. In analyzing the proposal, OSPB discusses it with the Office of Policy and Initiatives. In the past, departments have submitted legislative initiatives with fiscal impacts using the change request factsheet; however, in many cases the information provided was insufficient for a thorough review. For the FY 2010-11 cycle, OSPB is requiring the submission of the Legislative Proposals form as provided at Appendix A.

Departments must provide sufficient information related to the cost of proposals, the justification of needed changes, and calculations to support the cost estimate. For example, if the Department of Human Services is requesting funds for additional caseload based on statutory changes to the Aid to the Needy Disabled program eligibility categories, the department must provide calculations to justify the cost.

Required Elements for the Fiscal Impact Analysis

Statutory Changes: Check one of the following – New Law or Program or Modification of Existing Statutes

Fiscal Impact: Check all that apply.

Short summary of proposal: Briefly explain the proposal. This should include the problem/issue that the legislation will address. It should provide an explanation of the mechanics of the proposal and why this is important legislation to pursue. If contractors, FTE, new resources, expansions in caseload, or other consequences are included, these should be described here.

Specific Legislative Changes: List specific changes to statute included in the proposal.

Calculations for Proposal: Complete the summary tables provided as applicable. Departments can add to the tables or revise them, but typically all fiscal impact analyses include such tables. The tables can be adjusted to only show affected funds and to show affected years (including out years). The department should include additional tables to support the summary fiscal impact (revenues and expenditures).

Assumptions for Calculations: Assumptions to support the above calculations. Assumptions support the basis of the calculations, and explain the reasons for the calculations so they can be repeated. They are similar to the Assumptions for Calculations section of a Change Request. See the Fiscal Impact Analysis examples to ensure this section is complete accurately. This is the area most frequently requiring resubmission by departments after OSPB review.

Impact on Other Government Agencies: List other governmental agencies that will be affected by this legislation. If another department's budget is directly affected, those dollars (and FTE if necessary) should be reflected in a table.

For more information contact: Provide department contact information for this proposal.

See Appendix A for specific examples of completed Fiscal Impact Analysis forms.